



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-129, C-570-130]

Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Initiation of a Circumvention Inquiry on the Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from MTD Products, Inc (MTD), and its parent company, Stanley Black & Decker, Inc. (SBD) (collectively, the domestic interested parties), the U.S. Department of Commerce (Commerce) is initiating a circumvention inquiry to determine whether certain lawn mowers assembled or completed in the United States by attaching Chinese cutting deck shells (attached to at least one significant non-engine component) to internal combustion engines, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain walk-behind lawn mowers and parts thereof (lawn mowers) from the People's Republic of China (China).

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Natasia Harrison, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5760 or (202) 482-1240, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2022, MTD requested the initiation of a circumvention inquiry pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), to determine whether certain lawn mowers assembled or completed by Daye North America, Inc. by joining, in the United States, a cutting deck shell (attached to at least one significant non-engine component) made in

China to an internal combustion engine are circumventing the *Orders*.¹ However, Commerce rejected MTD's circumvention inquiry request because we found that MTD had not adequately alleged the elements necessary for a circumvention determination under section 781(a) of the Act.² On July 5, 2022, pursuant to section 781(a) of the Act and 19 CFR 351.226, MTD filed an amended circumvention inquiry request alleging that the *Orders* were being circumvented by merchandise completed or assembled in the United States.³ On August 18, 2022, Commerce rejected MTD's amended request based on certain deficiencies identified in the amended circumvention inquiry request, and issued a deficiency questionnaire to MTD.⁴

On September 7, 2022, pursuant to section 781(a) of the Act and 19 CFR 351.226, the domestic interested parties filed a third circumvention inquiry request alleging that the *Orders* are being circumvented by merchandise completed or assembled in the United States.⁵ The domestic interested parties also provided information in response to Commerce's August 18, 2022 Deficiency Questionnaire.⁶ On September 21, 2022, Ningbo Daye Garden Machinery Co., Ltd. (Ningbo Daye), Ningbo Lingyue Intelligent Equipment Co., Ltd., and Daye North America, Inc. (Daye North America) (collectively, Daye), filed comments in opposition to the domestic interested parties' request.⁷ On October 6, 2022, we extended the deadline to initiate this

¹ See *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 86 FR 36703 (July 13, 2021); and *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination*, 86 FR 36702 (July 13, 2021) (collectively, *Orders*).

² See Commerce's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Declining to Initiate a Circumvention Inquiry," dated May 26, 2022.

³ See Commerce's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Declining to Initiate a Circumvention Inquiry and Deficiency Questionnaire," dated August 18, 2022.

⁴ *Id.*

⁵ See Domestic Interested Parties' Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China; Amended Request for an Anticircumvention Inquiry Pursuant to 19 U.S.C. 1677j(a)," dated September 7, 2022, at part 2.

⁶ See Domestic Interested Parties' Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China; Amended Request for an Anticircumvention Inquiry Pursuant to 19 U.S.C. 1677j(a)," dated September 7, 2022 (Deficiency Questionnaire Response), at part 1.

⁷ See Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China; Anti-Circumvention Inquiry: Daye's Comments in Opposition to Initiation and Request to Reject MTD's Third Request for an Anti-Circumvention Inquiry," dated September 21, 2022.

circumvention inquiry by 14 days, to October 21, 2022, in accordance with 19 CFR

351.226(d)(1).⁸

Scope of the *Orders*

The products covered by these *Orders* are lawn mowers from China. A full description of the scope of the *Orders* is provided in the Circumvention Initiation Memorandum.⁹

Merchandise Subject to the Circumvention Inquiry

The merchandise subject to this circumvention inquiry are lawn mower sub-assemblies imported from China and comprised of a cutting deck shell attached to at least one other significant non-engine component, such as, but not limited to, a handle, wheels, grass catcher bag, or an electronic starter.¹⁰ These sub-assemblies are assembled or completed in the United States by attaching internal combustion engines to produce rotary walk-behind lawn mowers of the type that would be subject to the *Orders*.¹¹ The cutting deck shell is the portion of the lawn mower – typically of aluminum or steel – that houses and protects a user from a rotating blade. Cutting deck shells are typically entered under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8433.11 or 8433.90.

⁸ See Memorandum, “Extension of Time to Determine Whether to Initiate Circumvention Inquiry,” dated October 6, 2022.

⁹ See Memorandum, “Certain Walk-Behind Lawn Mowers and Parts Thereof from the People’s Republic of China: Initiation of a Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders,” dated concurrently with, and hereby adopted by, this notice (Circumvention Initiation Memorandum).

¹⁰ The domestic interested parties describe a “significant” component as “a component that is attached to the cutting deck shell at the time it is imported into the United States, and which is material to the operation of the mower into which it is to be completed in the United States.” See Deficiency Questionnaire Response at 7. According to the domestic interested parties, “generic items that are not specifically designed for use on lawn mowers, such as screws, nuts, bolts, cotter pins, shear pins, or clips” are not significant. *Id.* While we have initiated on the product description as proposed by the domestic interested parties, we have concerns about the administrability of the current language. As such, we intend to consider this issue further during the inquiry.

¹¹ The domestic interested parties ask that the inquiry cover only lawn mowers “of the type that would be subject to the Orders on Certain Walk-Behind Lawn Mowers and Parts Thereof from the People’s Republic of China.” The *Orders*, in turn, include lawn mowers “regardless of the origin of its engine, unless such lawn mowers contain an engine that is covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from China.” See Circumvention Initiation Memorandum at 2-3. Therefore, this inquiry does not include lawn mowers assembled or completed in the United States using small vertical engines from China that are covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225 cc, and parts thereof.

Initiation of Circumvention Inquiry

If Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce “will accept the request and initiate a circumvention inquiry.”¹² Each circumvention inquiry request must allege “that the elements necessary for a circumvention determination under section 781 of the Act exist” and be “accompanied by information reasonably available to the interested party supporting these allegations.”¹³ The domestic interested parties allege circumvention pursuant to section 781(a) of the Act, which pertains to merchandise completed or assembled in the United States.

For companion AD and CVD proceedings, “the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding.”¹⁴ Further, once “the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.”¹⁵ Accordingly, once Commerce concludes this circumvention inquiry, Commerce intends to place its final circumvention determination on the record of the companion CVD proceeding.

Section 781(a)(1) of the Act provides that Commerce may find circumvention of an order when merchandise of the same class or kind subject to the order is completed or assembled in the United States from parts or components produced in the country subject to the order. In conducting a circumvention inquiry, under section 781(a)(1) of the Act, Commerce relies on the following criteria: (A) merchandise sold in the United States is of the same class or kind as any merchandise that is the subject of an AD or CVD order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or

¹² See 19 CFR 351.226(d)(1)(ii).

¹³ See 19 CFR 351.226(c)(1).

¹⁴ See 19 CFR 351.226(m)(2).

¹⁵ *Id.*

completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise. As discussed below, the domestic interested parties provided evidence with respect to these criteria.

However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in the United States is minor or insignificant.¹⁶ Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the United States, and to reach an affirmative or negative circumvention determination based on the totality of the circumstances of the particular circumvention inquiry.¹⁷

In addition, section 781(a)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a foreign country within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country to which the order applies; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation that resulted in the issuance of such order.

Based on our analysis of the domestic interested parties' circumvention request, Commerce determines that the domestic interested parties have satisfied the criteria under 19 CFR 351.226(c) to warrant the initiation of a circumvention inquiry of the *Orders*. For a full discussion of the basis for our decision to initiate this circumvention inquiry, *see* the Circumvention Initiation Memorandum. A list of topics discussed in the Circumvention

¹⁶ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994), at 893.

¹⁷ See *Hydrofluorocarbon Blends from the People's Republic of China: Final Negative Scope Ruling on Gujarat Fluorochemicals Ltd.'s R-410A Blend; Affirmative Final Determination of Circumvention of the Antidumping Duty Order by Indian Blends Containing CCC Components*, 85 FR 61930 (October 1, 2020), and accompanying Issues and Decision Memorandum, at 20 (specifying same in the context of a section 781(b) inquiry).

Initiation Memorandum is included as the appendix to this notice. As explained in the Circumvention Initiation Memorandum, the information provided by the domestic interested parties warrants initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.¹⁸

Consistent with the approach in the prior circumvention inquiries that were initiated on a country-wide basis, Commerce intends to issue questionnaires to solicit information from producers and exporters in China concerning shipments of Chinese cutting deck shells (attached to at least one significant non-engine component) to the United States to be attached to internal combustion engines and assembled or completed into lawn mowers in the United States. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of the initiation of this circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders*. Should Commerce issue preliminary or final circumvention determination, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

¹⁸ See, e.g., *Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(a) of the Act, Commerce determines that the MTD's request for this circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether certain lawn mowers assembled in the United States with Chinese cutting deck shells (attached to at least one significant non-engine component) and internal combustion engines, are circumventing the *Orders*. In addition, we included a description of the product that is the subject of this inquiry, and an explanation of the reasons for Commerce's decision to initiate this inquiry as provided above and in the accompanying Circumvention Initiation Memorandum. In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary determination no later than 150 days from the date of publication of the notice of initiation of this circumvention inquiry in the *Federal Register*.

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: October 21, 2022.

Lisa W. Wang,
Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Circumvention Initiation Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Statutory and Regulatory Framework for Circumvention Inquiries
- VI. Statutory Analysis for a Circumvention Inquiry
- VII. Whether Process of Assembly or Completion is Minor or Insignificant
- VIII. Additional Factors to Consider in Determining Whether a Circumvention Inquiry is Warranted
- IX. Comments on the Initiation of the Circumvention Inquiry
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[FR Doc. 2022-23440 Filed: 10/26/2022 8:45 am; Publication Date: 10/27/2022]